

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2639 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

B S NARVE DY.RURAL LABOUR COMMISSIONER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2639 of 2001
MR KIRIT J MACWAN for Petitioner No. 1
MS HARSHA DEVANI, AGP for Respondents
-

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/01/2002

ORAL JUDGEMENT

#. At the notice stage, the matter is kept for final hearing today, hence, Rule returnable today. Learned AGP Ms.Devani waives service of rule on behalf of the

respondents. With the consent of the parties, the matter is taken up for final hearing today.

#. The grievance of the petitioner in this petition is that even though he was required to take emergency treatment for heart ailment in the private hospital, his medical claim is not sanctioned by the department. The claim is quantified at Rs.15352/- in the petition. The case of the petitioner is that, he was working as Deputy Rural Labour Commissioner for the last three years at Gandhinagar and while he was on deputation in the Kachchh area, he suffered severe heart attack on 22.6.1998 and was rushed to Jivraj Mehta Hospital, Ahmedabad which is situated in Vasna area of Ahmedabad city. According to the petitioner, aforesaid hospital is nearby to his residence. As per the averments made in paragraph 4.1 in the petition, he was kept in ICC Unit and treated for cardiac ailment for the period from 22.6.1998 to 3.7.1998 and from 13.7.1998 to 15.7.1998 and 17.7.1998 and 18.7.1998. Subsequently, he was transferred at Rajasthan Hospital for angiography as per the medical advice and again he was shifted at Jivraj Mehta Hospital for further treatment. He was relieved from the said hospital on 18.8.1998. The petitioner, thereafter, submitted the medical bill along with necessary medical certificate to the Government, which was given to him by Jivraj Mehta Hospital, for getting reimbursement of the same. Thereafter, the petitioner sent various reminders. However, subsequently, by order dated 12.3.1999, the aforesaid claim of the petitioner was rejected on the ground that since the hospital, in which the petitioner has taken the medical treatment, is a private hospital and since the aforesaid treatment is available in the Government hospital/civil hospital, the said claim cannot be sanctioned. Aggrieved by the said decision dated 12.3.1999 which is at Annexure-C to the petition, the petitioner has filed this petition challenging the aforesaid action.

#. At the time of hearing the petition, it was argued by the learned advocate for the petitioner that, because of the severe heart ailment, the petitioner had to rush and get himself admitted in the Jivraj Mehta Hospital which is the nearest hospital nearby his residence. It is submitted by him that if the petitioner had waited for a long time or even for a few hours, condition of the petitioner would have worsened. The certificate issued by the hospital authority is at page 15 wherein it is written with ink that "emergency admission for saving life". The petitioner was accordingly admitted considering the emergency in the aforesaid private

hospital. In spite of the same, unfortunately, his just claim was rejected by the Government by resorting to a very technical ground.

#. It is required to be noted that, whenever there is an emergency for taking medical treatment, one is not expected to find out where the Government or Civil Hospital is situated. In such cases an attempt would be made by the concerned person or his relatives first to approach the nearest hospital so that one can save his life. All other things are secondary and under the circumstances, the first priority which is required to be given by a person is to save his life. It is not expected, therefore, from a person to go at a distant place or travelling long in order to get himself enrolled in the Government or Corporation's hospital. Apart from the aforesaid facts, in the instant case, as per the certificate issued by the Jivraj Mehta Hospital, it is clear that the petitioner was admitted in the hospital considering the emergency. Under these circumstances, the State Government, without delaying the aforesaid matter or without rejecting the claim of the petitioner, should have gracefully sanctioned the medical bill in favour of the petitioner. Unfortunately, even though the petitioner had submitted the medical certificate, wherein it is clearly mentioned that, the petitioner was given emergency admission in the said hospital, yet the Government has rejected his just claim and has refused to sanction the medical claim. The petitioner has relied upon the Gujarat State Services (Medical Treatment) Rules, 1988. Even as per the said Rules, a person can be admitted in the private hospital in case of emergency and even the medical bill for the said emergency treatment can be reimbursed in parity with the rates of the Government hospital. In that view of the matter also, there was no reason to reject the entire claim of the petitioner.

#. At this stage, reference is also required to be made to the decision of the Apex court in case of Surjit Singh Vs. State of Punjab, AIR 1996 SC 1388. In paragraph 11, the Apex Court has observed as under :

"The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go

elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs.40,000/already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

#. Under these circumstances, action of the respondents in not reimbursing the medical claim in favour of the petitioner is absolutely unjustified and the decision is, therefore, required to be struck down. The respondents are directed to reimburse the medical claim of the petitioner for the treatment which he has taken in the Jivraj Mehta Hospital and whatever amount is required to be paid to the petitioner for such treatment, may be paid to him, by considering the aforesaid Government Resolution of 1998 by holding that the petitioner was required to be hospitalized in the hospital as an emergency case, within a period of four weeks from the date of receipt of the writ of this order. It is clarified that, if the amount is required to be paid taking into consideration the similar rate at which a person is admitted for treatment in the Government hospital, the same also be taken into account. The respondents are directed not to delay the aforesaid payment, as according to the petitioner, he has already retired from service and accordingly the amount payable to the petitioner be paid within the stipulated time, as

indicated above.

#. In view of what is stated above, the petition is allowed. Rule is made absolute with no order as to costs.

(P.B.Majmudar, J)
(pathan)